

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed December 4, 2003. Currently, claims 80-116 are pending.

Rejection of Claims 80-116

Claims 80-116 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-79 of copending Application No. 09/753,537 in view of 09/753,643. A response to this rejection will be forthcoming upon allowance and issuance of a patent on the above mentioned applications.

Rejection of Claims 80-116

Claims 80-116 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-79 of copending Application No. 09/753,537 in view of 09/753,644. A response to this rejection will be forthcoming upon allowance and issuance of a patent on the above mentioned applications.

Rejection of Claims 80-87, 90-97, 100-102, and 105-116 Under 35 USC 102(e)

Claims 80-87, 90-97, 100-102, and 105-116 are rejected under 35 USC 102(e) as being anticipated by Bodnar U.S. Patent No. 6,295,541 ("Bodnar"). Applicants respectfully traverse the rejection as follows.

Claims 80-87 and 90

Independent Claim 80, and Claims 81-87 and 90 dependent directly or indirectly thereon, each recite features which are nowhere disclosed, or otherwise taught or suggested in Bodnar. In particular, Claim 80 recites in part:

computer code for comparing at least one file on the personal computer and a record of the file on the computer.

Bodnar has no disclosure of a system incorporating this feature. In the present invention, the system includes a record with the previous state of data against which the current state of data in the at least on file is compared. By contrast, the GUD of Bodnar does not have a record of a file

which stores a previous state of data. The GUD of Bodnar stores only the current data for a device.

Claim 80 further recites:

computer code for ... providing binary differencing data between the file and the record of the file.

Bodnar further has no disclosure of a system incorporating this feature. In the present invention, the system only transmits difference information resulting from changes to data files on one or more devices. There is no disclosure, teaching or suggestion that it is only difference information resulting from changes to data files that is provided for use in the synchronization process. Moreover, the discussion in Bodnar of binary synchronizations refers to a series of synchronizations which are performed two at a time. See, Bodnar, Col. 22, line 11 through Col. 25, line 50. By contrast, while comparisons may take place two at a time with the present invention, the binary differencing data of the present invention is differencing data derived from examination of binary data, such as for example unstructured, non-application data. Thus, the invention recited in Claims 80-87 and 90 is not shown in the cited reference.

Claims 91-97

Independent Claim 91, and Claims 92 through 97 dependent directly or indirectly thereon, recite in part, "a differencing transaction generator including binary difference data extractor." As discussed above, the system of Bodnar has no disclosure of a binary difference data extractor as that term is used in the present application. The binary synchronization discussed in Bodnar does not relate to generating binary difference data from the examination of binary data. It instead refers to a series of synchronizations which are performed two at a time. Thus, the invention recited in Claims 91-97 is not shown in the cited reference.

Claims 100-102 and 105-108

Independent Claim 100, and Claims 101 through 102 and 105 through 108 dependent directly or indirectly thereon, recite in part:

a binary difference transaction generator, the binary difference transaction including a binary difference comparison between a first file and a previous version of said first file.

As discussed above, the system of Bodnar has no disclosure of a binary difference data extractor as that term is used in the present application. As further discussed above, Bodnar does not store a previous version of a file. It only stores a current version of a file. Thus, the invention recited in Claims 100-102 and 105-108 is not shown in the cited reference.

Claims 109-115

Independent Claim 109, and Claims 110 through 115 dependent directly or indirectly thereon, each recite in part:

computer code for comparing at least one file on a network coupled device in communication with the network coupled server and extracting binary differencing data representing the difference between the file and a record of the file.

As previously discussed, Bodnar fails to disclose code for extracting binary differencing data. Moreover, as further discussed above, Bodnar fails to disclose extracting data representing only the difference between a file and record of the file. Furthermore, Bodnar does not maintain a record of the file for comparison against the file. Based on each of these reasons, Bodnar fails to disclose the invention recited in Claims 109-115.

Claim 116

Claim 116 recites first and second differencing engines. Bodnar has no disclosure of more than one differencing engines. Moreover, Claim 116 recites that the differencing engines are binary differencing engines. As previously discussed, Bodnar fails to disclose a system of binary differencing of data. Thus, the invention recited in Claim 116 is not shown in the cited reference.

Based on the above, it is respectfully submitted that Claims 80-87, 90-97, 100-102, and 105-116 are patentable over the cited reference, and it is respectfully requested that the rejection of these claims on section 102 grounds be withdrawn.

Rejection of Claims 88-89, 98-99, and 103-104 Under 35 USC 103(a)

Claims 88-89, 98-99, and 103-104 are rejected under 35 USC 103(a) as being unpatentable over Bodnar U.S. Patent No. 6,295,541 in view of Gutman et al. U.S. Patent No.

5,130,993 ("Gutman"). However, Claims 88-89, 98-99, and 103-104 depend on independent Claims 80, 91 and 100. As discussed above, it is respectfully submitted that Claims 80, 91 and 100 are patentable over Bodnar. Gutman adds nothing to the teaching of Bodnar with respect to the above-described distinguishing features. For these reasons, it is respectfully submitted the cited references, taken singly or in combination with each other fail to teach or suggest the invention recited in Claims 88-89, 98-99, and 103-104, and it is respectfully requested that the rejection of these claims on section 103 grounds be withdrawn.

Based on the above amendments and these remarks, reconsideration of claims 80-116 is respectfully requested.

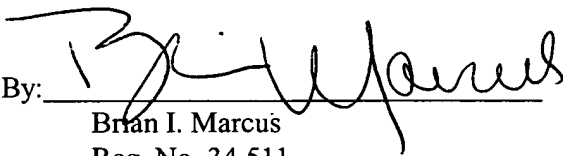
The Examiner's prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned attorney by telephone.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136 for extending the time to respond up to and including today, June 4, 2004.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: June 4, 2004

By: 
Brian I. Marcus
Reg. No. 34,511

VIERRA MAGEN MARCUS HARMON & DENIRO LLP
685 Market Street, Suite 540
San Francisco, California 94105-4206
Telephone: (415) 369-9660
Facsimile: (415) 369-9665